IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 182 OF 1988

Kolhapur Zilla Sahakari Dudh
Utpadak Sangh Limited .. Petitioner

versus

Warana Sahakari Dudh Utpadak
Prakriya Sangh Ltd. .. Respondents

...

Mr.Rangrao Patil for the petitioner..

Mr.T.S. Ingale for the respondent nos.1 and 2.

CORAM : B.H. MARLAPALLE,J

DATED : 28th September 2005.

P.C.:

1. It has been alleged in this Contempt Petition that there was an order of injunction passed

against the respondent no.1 by the Co-operative Court on 19th November, 1997 restraining it by way of ad interim ex parte order from collecting milk out of the area of operation of the disputants - Kolhapur Zilla Dudh Utpadak Sangh, Kolhapur and the said order was confirmed by the Maharashtra State Co-operative Court in Appeal No.510 of 1987 on 11th January in the following terms :

> "Injunction should be related to preventing the appellant from collecting milk from the members of the respondents."

2. It is alleged in this Contempt Petition that despite these restraining orders that the respondent no.1 Karkhana though its employees has collected milk between 19th January 1987 to 11th January 1988 from the members of Datta Sahakari Dudh Sanstha and Nagnath Sahakari Dudh Sanstha, Ambap (Malwadi) Taluka Hathkanangale District Kolhapur.

3. It is noticed from the said allegations that the present petitioner had filed Misc. Application

No.4 of 1988 in Appeal No. 510 of 1987 before the Maharashtra State Co-operative Court and invoked the powers of the said Court under section 14j8 A of the Maharshtra Co-operative Societies Act, 1960 and prayed for punishing the present respondents from action of the court. Notice was issued to the respondents and after hearing both the parties the learned President of the Lower Appellate Court vide his order dated 4th November, 1988 was pleased to discharge the contempt notice by recording his satisfaction that there was no prima facie case of contempt having been committed. On the face of these observations made by the Lower Appellate court it was not permissible for the petitioner to approach this court under the Contempt of Courts Act, 1971 unless the order dated 4th November, 1988 was challenged. Having failed in Miscellaneous Application No. 4 of 1988 in obtaining an order for punishing the respondent - contemnor under section 148 A of the Maharashtra Co-operative Societies Act, this Contempt Petition for the same cause of action cannot be entertained.

4. Even otherwise the affidavit in reply filed by the respondent no.1 clearly indicates that the

respondent no.1 Karkhana has not collected milk from any members or from the cooperative societies who are located within the area of operation of the petitioner - sangh. The milk collected is from the societies' or individuals who do not reside in the area of operation of the petitioner - sangh on whose membership money was refunded by the petitioner. In the premises, this contempt petition fails and the same is hereby dismissed.

B.H. MARLAPALLE, J